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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,816	07/02/2003	Fred O. Hartmann	G351.12-01	3853
43662 7590 06/27/2007 DFAULT LAW FIRM, P.C. 920 LUMBER EXCHANGE BUILDING TEN SOUTH FIFTH STREET MINNEAPOLIS, MN 55402			EXAMINER ADAMS, GREGORY W	
			ART UNIT 3652	PAPER NUMBER
			MAIL DATE 06/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/612,816

**Applicant(s)**

HARTMANN ET AL.

**Examiner**

Gregory W. Adams

**Art Unit**

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4, 6, 7, 9, 11, 13-20, 22, 23, 25, 27-32 and 34-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4, 6, 7, 9, 11, 13-20, 22, 23, 25, 27-32 and 34-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

***General Comments***

In view of the appeal brief filed on April 25, 2007 PROSECUTION IS HEREBY REOPENED.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. No amendments have been submitted subsequent to the August 8, 2006 Final Rejection. Thus, no amendments are to be entered.

Applicant's arguments, see Applicants Appeal Brief, filed April 25, 2007, with respect to claims 14, 20, 27 & 28 have been fully considered and are persuasive. The final rejection of August 8, 2006 has been withdrawn. Applicant's arguments with respect to at least claims 14, 20, 27 & 28 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 14, 27, 28 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Wheels are critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Wheels are critical in transporting loads "relatively short distances or in places or spaces where mechanized trucks or forklifts are incapable or unable to operate." See Applicants Specification, page 1, lines 11-13.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4, 6-7, 27-30, 34-35 & 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Buckley et al. (US 4,186,841).

With respect to claims 4, 27, 38, Buckley et al. disclose-

- platform - 108
- channel (generally indicated by that space defined by 101,114, 104)
- handle - 117b
- handle slidable position - FIG. 4B
- handle pivotable position - FIG. 4A

- handle locked position - FIG. 4C
- platform locking plate - 101
- handle tongue member 117a affixed to an outer longitudinal handle surface.

With respect to claim 6, Buckley et al. disclose supports 101-104, 114.

With respect to claim 7, Buckley et al. disclose positioning a handle from the pivotable position to a slidable position, disengages a first stop member from a first hinge member and a second stop member from a second hinge member.

With respect to claim 28, 29, Buckley et al. disclose-

- platform - 108
- channel - (generally indicated by that space defined by 101, 114, 104)
- handle - 117b
- handle slidable position - FIGS. 4B
- handle pivotable position - FIG. 4A
- handle extended locked position - FIG. 4C
- platform first hinge member - 101b
- platform second hinge member - 101b
- first stop member - 117c
- second stop member - 117c

With respect to claim 30, Buckley et al. disclose supports 101-104, 114.

With respect to claims 34-35, Buckley et al. disclose:

- a locking plate 101 connected to a platform; and

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- a tongue member 117a extending away spaced-apart from and parallel to the handle.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 11, 20, 22, 25, 32, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley et al. (US 4,186,841) in view of Jones et al. (US 4,209,183).

With respect to claims 9, 11, 20, 25, 32, Buckley et al. disclose-

- platform 108
- handle 117b
- handle vertical locked position
- handle stowed position
- channel (generally indicated by that space defined by 101,114, 104)
- fixedly attached to a platform underside 108
- support members (for a fork lift) 101-104, 114
- locking plate 101
- tongue member 117a-b

Buckley et al. does not disclose wheels disposed within guards that extend down from a pallet bottom. Jones et al. discloses wheels 19, 20 within guards 37, 38 that extend down from a pallet 12 bottom. Jones's discloses two fixed directional wheels 19. Jones

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et al. teaches that "pallets are well-known and are usually provided with wheels so as to be suitable for moving goods loaded on the base to and about, for example, supermarkets." C1/L21. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pallet of Buckley et al. to include wheels disposed within guards that extend down from a pallet bottom, as per the teachings of Buckley et al., to move palletized goods about a supermarket.

With respect to claim 22, Buckley's lock plate 101 attaches to a channel.

With respect to claim 37, Buckley's tongue 117a-b is on a handle.

Claims 13 & 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley et al. (US 4,186,841) in view of Balolia (US 6,095,533).

With respect to claims 13 & 31, Buckley et al. does not disclose a foot brake. Balolia discloses a pallet 22 having foot brakes 28 such that a load, e.g. machinery, may be safely immobilized after moving from one work sight to the next. C1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Buckley et al. to include a foot brake, as per the teachings of Balolia, improves safety of pallets.

Claims 14, 17-19, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley et al. (US 4,186,841) in view of Howe (US 1,582,045) (previously cited).

With respect to claim 14, 17, 36, Buckley et al. discloses-

- platform locking plate 101
- channel first hinge member 101b
- channel second hinge member 101b

- handle unitary right member 117b
- handle tongue portion 117a-b
- spaced apart from a rigid member 117b
- and parallel to a rigid member 117b

Buckley et al. do not disclose a channel member fixedly attached to an underside of the platform; a handle connectable to the platform comprising a unitary rigid member slidably disposable within the channel member and between the first and the second spaced-apart members; a tongue portion spaced-apart from and extending downwardly parallel to the rigid member; and a stop positioned proximate to a distal end of the rigid member; and whereupon extracting the handle from the channel member, the stop engages the first and second hinge members and the handle is pivotally positionable between a lowered positioned and a raised position, wherein the handle is lockable to the platform by positioning the handle to dispose the locking plate between the tongue portion and the rigid member. Howe discloses-

- channel member 17
- connected under a platform 10
- platform locking plate 28
- channel first hinge member 19
- channel second hinge member 19
- connected to a channel 17
- handle unitary right member 22
- that is slidably disposable within a channel member 17



- spaced apart from a rigid member 22
- and parallel to a rigid member 22
- handle stop 20, 26, 27
- handle is pivotally positionable between lowered position yes
- raised position FIG. 1
- handle disposes locking plate between tongue portion and rigid member no

Howe teaches that a recessed handle allows longer objects, e.g. overhang a platform, can be placed on a pallet such that "steering and propelling is done by manipulating the object itself." Page 2/L11-26. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pallet of Buckley et al. to include a channel, as per the teachings of Howe, to handle overhanging loads.

With respect to claims 18-19, Buckley et al. disclose supports 101-104, 114.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley et al. (US 4,186,841) in view of Howe (US 1,582,045) (previously cited) and Balolia (US 6,095,533).

With respect to claim 15, Buckley et al. does not disclose a foot brake. Balolia discloses a pallet 22 having foot brakes 28 such that a load, e.g. machinery, may be safely immobilized after moving from one work sight to the next. C1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Buckley et al. to include a foot brake, as per the teachings of Balolia, improves safety of pallets.

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Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley et al. (US 4,186,841) in view of Howe (US 1,582,045) (previously cited) and Jones et al. (US 4,209,183).

With respect to claims 9, 11, 32, Buckley et al. does not disclose wheels disposed within guards that extend down from a pallet bottom. Jones et al. discloses wheels 19, 20 within guards 37, 38 that extend down from a pallet 12 bottom because such "pallets are well-known and are usually provided with wheels so as to be suitable for moving goods loaded on the base to and about, for example, supermarkets." C1/L21. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the pallet of Buckley et al. to include wheels disposed within guards that extend down from a pallet bottom, as per the teachings of Buckley et al., to move palletized goods about a supermarket.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley et al. (US 4,186,841) in view of Jones et al. (US 4,209,183) and Balolia (US 6,095,533).

With respect to claim 23, Buckley et al. does not disclose a foot brake. Balolia discloses a pallet 22 having foot brakes 28 such that a load, e.g. machinery, may be safely immobilized after moving from one work sight to the next. C1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Buckley et al. to include a foot brake, as per the teachings of Balolia, improves safety of pallets.

***Allowable Subject Matter***

Claims 14, 16 & 36 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The cited prior art does not disclose: A hand-truck comprising: a platform; a channel member fixedly attached to an underside of the platform; a locking plate connected to the platform proximate to the channel member; first and second spaced-apart hinge members fixedly attached to the channel member; a handle connectable to the platform comprising: a unitary rigid member slidably disposable within the channel member and between the first and the second spaced-apart members; a tongue portion spaced-apart from and extending downwardly parallel to the rigid member; and a stop positioned proximate to a distal end of the rigid member; and whereupon extracting the handle from the channel member, the stop engages the first and second hinge members and the handle is pivotally positionable between a lowered positioned and a raised position, wherein the handle is lockable to the platform by positioning the handle to dispose the locking plate between the tongue portion and the rigid member; and further comprising: first and second guard members attached to the underside of the platform; and a wheel disposed within each guard member, wherein the wheels engage the ground when the platform is in a substantially horizontal position, whereupon raising a second end of the platform the guard engages the ground, whereupon further raising of the second end disengages the wheels from the ground and the hand-truck is positionable to a substantially vertical position supported by the guard members; and further comprising a tongue member fixedly attaches to an outer longitudinal surface of the rigid member.

***Response to Arguments***

As noted above applicant's arguments with respect to at least claims 14, 20, 27 & 28 have been considered but are moot in view of the new ground(s) of rejection.

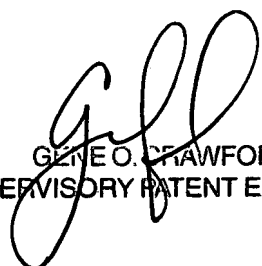
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GWA

  
GENE O. CRAWFORD  
SUPERVISORY PATENT EXAMINER